

Harry P. Sacks
Steven Raffaele
HOLLAND & KNIGHT LLP
195 Broadway, 24th Floor
New York, NY 10007
(212) 513-3200

Attorneys for Plaintiff
The Barton Group, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE BARTON GROUP, INC.,

08 Civ. 5679 (GEL)(FM)

Plaintiff,

-against-

NCR CORPORATION,

Defendant.

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS
CONTAINED IN DEFENDANT'S
AMENDED ANSWER**

Plaintiff, The Barton Group, Inc., by its attorneys, Holland & Knight LLP, for its Reply to the Counterclaims of Defendant NCR Corporation, contained in Defendant's Amended Answer dated July 28, 2008 (the "Amended Answer"), herein states as follows:

**WITH RESPECT TO DEFENDANT'S THIRD
DEFENSE AND FIRST COUNTERCLAIM**

1. Admits that the parties entered into a contract dated July 11, 2002 and an amended contract dated September 3, 2003 and that such contracts pertain to various dealings between both parties. Those contracts are incorporated herein with the same force and effect as if set forth in their entirety herein and plaintiff begs leave to refer to same upon the trial of this action. Except as so admitted, plaintiff denies the allegations contained in paragraph 16 of the Amended Answer.

2. Denies the allegations contained in paragraphs 17 through 20 of the Amended Answer.

**WITH RESPECT TO DEFENDANT'S FOURTH
DEFENSE AND SECOND COUNTERCLAIM**

3. With respect to paragraph 21 of the Amended Answer, plaintiff reiterates the admissions, denials, and allegations contained in paragraph 1 hereof.

4. Denies the allegations contained in paragraphs 22 and 23 of the Amended Answer.

**PLAINTIFF'S AFFIRMATIVE DEFENSES
AS AND FOR A FIRST DEFENSE**

5. Upon information and belief, the amount in controversy with respect to the disputes herein alleged in Defendant's Counterclaims do not exceed the sum of \$75,000, exclusive of interest and costs.

AS AND FOR A SECOND DEFENSE

6. Defendant's Counterclaims are barred, in whole or in part, by the applicable statutes of limitations.

AS AND FOR A THIRD DEFENSE

7. Defendant's Counterclaims are barred, in whole or in part, by the doctrine of laches.

AS AND FOR A FOURTH DEFENSE

8. Defendant's Counterclaims are barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A FIFTH DEFENSE

9. Defendant's Counterclaims are barred in whole or in part, by the doctrine of estoppel.

10. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant, dismiss and/or strike Defendant's Defenses and Counterclaims in their entirety as against Plaintiff, and award to Plaintiff its attorneys' fees, costs, disbursements, and the damages to which it is entitled by reason of the matters alleged in the Complaint herein, and such other relief as this Court deems just and proper.

Dated: New York, New York
August 20, 2008

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Harry P. Sacks
Steven Raffaele
Attorneys for Plaintiff
195 Broadway
New York, New York 10007
(212) 513-3200

TO: Ira G. Greenberg
Edwards Angell Palmer & Dodge LLP
Attorneys for Defendant
750 Lexington Avenue
New York, NY 10022
212-308-4411

5553112_v2

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Title 28 U.S.C. §1746, that on August 20, 2008 I served a true and correct copy of the attached Plaintiff's Reply to Counterclaims Contained in Defendant's Amended Answer, by mailing it in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service, to be delivered by First Class Mail to:

Ira G. Greenberg
Edwards Angell Palmer & Dodger LLP
750 Lexington Avenue
New York, NY 10022

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2008.



Elvin Ramos
Holland & Knight LLP
195 Broadway
New York, NY 10007